Midwestern Video Personnel, Inc. *and* Michael Tatomir. Case 07–CA–148107

February 22, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND MCFERRAN

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge filed by Michael Tatomir on March 12, 2015, the General Counsel issued the complaint on July 31, 2015, against Midwestern Video Personnel, Inc. (the Respondent) alleging that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Tatomir. The Respondent filed an answer to the complaint.

Subsequently, the Respondent and Tatomir entered into an informal settlement agreement which was approved by the Regional Director for Region 7 on October 9, 2015. Among other things, the settlement agreement required the Respondent to: (1) offer Tatomir immediate and full reinstatement to his former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and/or privileges previously enjoyed; (2) make Tatomir whole by paying him $5000 at the time of signing the settlement agreement, and the balance of $9,350 as well as $110.53 in interest within 7 days from the approval of the settlement agreement by the Regional Director; (3) expunge from its files any reference to Tatomir's discharge, and notify Tatomir in writing that this has been done and notify Fox Sports Detroit in writing that the Respondent has reinstated Tatomir; and (4) post and email a notice to employees and mail a copy of the notice to employees for whom the Employer does not have a valid email address and who were employed at any time since January 1, 2015.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 7 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on July 31, 2015, in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

By letter dated October 14, 2015, the Region sent the Respondent a copy of the approved settlement agreement and advised it to take the steps necessary to comply. By letter dated October 22, 2015, the Region notified the Respondent that it had not complied with the settlement agreement by failing to pay the balance of $9,350 in wages and $110.53 in interest owed to Tatomir by October 16, 2015 (7 days after approval of the settlement agreement by the Regional Director). The letter advised the Respondent of its obligation to pay the total amount owed within 7 days of the issuance of the October 22, 2015 letter, and that failure to do so could lead to the reissuance of the complaint and the filing of a motion for default judgment.

According to the uncontroverted assertions in the motion for default judgment, by telephone conversation with the Region on October 26, 2015, the Respondent indicated that it had shut down its business and could not afford to pay anything to Tatomir. The Respondent further stated that it would submit nothing further in this matter and would not contest any remaining dispute. Again, the Region warned the Respondent that its failure to pay the amounts owed could result in the reissuance of the complaint and the filing of a motion for default judgment. The Respondent replied that it "cannot and will not" pay anything more to Tatomir. Motion, p. 4.

Having received no further response, on December 1, 2015, the Regional Director issued a Complaint Based on Breach of Affirmative Provisions of Settlement Agreement (reissued complaint) and the General Counsel filed a Motion for Default Judgment with the Board. On December 15, 2015, the Board issued an order transferring

the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to pay the balance of $9,350 in wages and $110.53 in interest owed to Tatomir. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that the Respondent's answer to the original complaint has been withdrawn and all of the allegations in the reissued complaint are true.[1] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Spencer, Ohio, and has been engaged in supplying video and audio crews for sports broadcast television production.

In conducting its operations during the calendar year ending December 31, 2014, the Respondent performed services valued in excess of $50,000 in States other than the State of Ohio.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 58, International Brotherhood of Electrical Workers (IBEW), AFL–CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Charlyn Scroggins – Owner and President
Deborah Coch – Operation Manager

About March 14, 2014, the Respondent's employee, Michael Tatomir, concertedly complained to the Respondent regarding the wages, hours, and working conditions of the Respondent's employees, by requesting that the Respondent seek the higher national wage rate from FOX Sports Detroit for a Detroit Tigers game telecast that was scheduled to be broadcasted nationally on a new network, FOX Sports Detroit One.

About February 10, 2015, the Respondent discharged Tatomir.

The Respondent discharged Tatomir because he engaged in the conduct described above and to discourage employees from engaging in these and other concerted activities, and because Tatomir supported the Union.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to comply with the unmet financial terms of the settlement agreement approved by the Regional Director for Region 7 on October 9, 2015.

Accordingly, we shall order the Respondent to make Tatomir whole by payment of the remaining balance of backpay as provided for in the settlement agreement in the amount of $9,350 in wages and $110.53 in interest. In addition, we shall order the Respondent to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters and reimburse Tatomir for any additional Federal and State income taxes that Tatomir may owe as a consequence of receiving a lump-sum backpay award in a calendar year other than the year in which the income would have been earned had the Act not been violated. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

In limiting our affirmative remedies to those enumerated above, we are mindful that the General Counsel is empowered under the default provision of the settlement agreement to seek "a full remedy for the violations found as is appropriate to remedy such violations," including backpay beyond that specified in the agreement.[2] However, in his Motion for Default Judgment, the General

[1] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

[2] As set forth above, the settlement agreement provided that, in case of noncompliance, the Board could "issue an order providing a full remedy for the violations found as is appropriate to remedy such violations."

Counsel has not sought such additional remedies and we will not, sua sponte, include them.[3]

ORDER

The National Labor Relations Board orders that the Respondent, Midwestern Video Personnel, Inc., Spencer, Ohio, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Remit $9,350 in wages and $110.53 in interest to Region 7 of the National Labor Relations Board to be disbursed to Michael Tatomir, in accordance with the terms of the settlement agreement approved by the Regional Director on October 9, 2015.

2. Compensate Michael Tatomir for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for Tatomir.

3. Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 22, 2016

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] See, e.g., *Benchmark Mechanical, Inc.*, 348 NLRB 576 (2006). The General Counsel specifically requested in his motion for default judgment here that the Board "order that the Respondent is responsible for the backpay owed of $9,350.00 and interest in the amount of $110.53, as well as such other relief deemed appropriate and necessary."